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No. 84-378

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

GOLDEN STATE TRANSIT CORPORATION,

Petitioner,

vs.

CITY OF LOS ANGELES,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The respondent, City of Los Angeles, respectfully requests that this Court deny the petition for writ of certiorari seeking review of the Ninth Circuit's opinion in the case. The case is reported in 726 F.2d 1430 (9th Cir. 1984).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to the constitutional and statutory provisions referred to by Petitioner the following are also involved. Los Angeles City Charter Sec. 3(8)(D).

STATEMENT OF THE CASE

The Respondent takes issue with Petitioner's "Statement of the Case" as to several assertions.

The City is not engaged in the taxicab business. It does not operate any taxicabs. Rather it authorizes the use of City streets for taxicab operations by one of two ways. Los Angeles Municipal Code, Sec. 71.02(b), (A-31, Petition). Golden State Transit dba Yellow Cab operated taxicabs pursuant to a franchise granted by the

City. Los Angeles Administrative Code, Sec. 13.4 (A-30, Petition). The City also issues vehicle permits to individuals for the operation of taxicabs.

The City also sets taxicab rates. In setting rates the City does not automatically allow a taxicab operator to charge such rates as it wishes. Rather the operator submits an application to the City and the City, based on its own independent evaluation and analysis, establishes the rate, (CR 75).

Taxicab franchises are granted by the City for a particular area of the City for a fixed term, the initial term being by competitive bidding (CR 74, Exhibit "A"). There is no provision in the franchise for an extension. The Los

Angeles City Charter Sec. 3(8)(D) provides in part:

> "The City may, by ordinance . . . grant to the holder of such franchise a new franchise to replace such franchise about to expire." Golden State Transit v. City of Los Angeles, 686 F.2d 758, 760(4) (9th Cir., 1982) (See fn. 4 to Petition, p.4.)

Golden State's existing taxicab franchise expired by its own terms on March 30, 1981.

It is the City Council, as the governing and legislative body of the City, which grants franchises, such action requiring the enactment of an ordinance. The action is a legislative action. Monarch Cablevision v. City Council, 239 Cal.App.2d 206, 210(2b); 48

Cal.Rptr. 550 (6).

The court ruled in the earlier Golden State Transit case, that the above quoted City Charter language, relating to the granting of a renewal franchise, was permissive thus conferring discretion on the City to deny the franchise. p. 760(4).

On March 23, 1981, the City Council did consider the question as to whether or not to grant Golden State a new franchise. As Golden State states in their Petition they did apply for a new franchise. The City Council had on an earlier date acted on the applications of the other twelve franchise operators. The Council had, as Petitioner states, granted new franchises to eleven of these. At the City Council hearing a representative of the Teamsters, the

union representing the striking Golden State Transit drivers, did urge the non-renewal of the franchise. (CR4, Exhibit 15, p. 3-6).

The transcript of the City Council proceedings also indicates that during the course of the hearing the president of one of the independent driver associations (those drivers who operate pursuant to an independent vehicle permit as opposed to being an employee of a franchise) stated as follows:

> "David Shapiro, President of the United Independent Taxi Drivers. I would like to say that with the demise of the Yellow and 350 less taxis in Los Angeles (referring to Yellow Cab's then non-operations because of its driver's strike) I would like to

inform the Council that the drivers are now being served and are able for the first time in two and one-half years to make a decent minimal living. Secondly, the doormen of the major hotels report to me that they are having better quality service with the demise of the Yellow Cabs than they have ever had before." (CR 4, Exhibit 15, p. 6-7).

Councilman Zev Yaroslavsky questioned Don Howery, the General Manager of the City's Department of Transportation, the department which regulates taxicabs in the City. Part of the questioning was as follows:

"**Mr. Yaroslavsky.** Thank you, Mr. President. Mr. Howery, could you tell me since the strike, how

long has the strike been going on now? About a month?

Mr. Howery. Since February 11.

Mr. Yaroslavsky. And since that time have there been enough taxicabs on the streets to pick up the slack that had been left by their lack of presence?

Mr. Howery. We have not done a study of this, but we . . .

Mr. Yaroslavsky. What is your professional opinion?

Mr. Howery. We have not received complaints.

Mr. Yaroslavsky. Okay."

Mr. Howery went on to testify that before the strike, "There were more than enough taxicabs on the street." (CR 4, Exhibit 15, p. 14-15).

The motion before the City Council was to allow for the granting of a new franchise for Golden State. The motion made no reference in anyway to the strike or a labor dispute. (CR 4, Exhibit 15, p. 34; CR 2, Exhibit 11). During the course of the Council discussion only three Councilpersons made any statement that can be interpreted as a concern on their part of granting the renewal franchise as long as there was a strike. The Council by a vote of 11-1 defeated the motion to allow for the renewal of the franchise. The Council action was strictly the defeat of the motion that would have permitted the renewal. The record does not support the Petition's contention that the City Council made it expressly clear that they refused to renew Golden

State's franchise because of their stance in the labor negotiations.

There is nothing in the record to support the Petition's assertion that the Teamsters and Golden State's competitors engaged in a scheme to withhold renewal of the franchise. The Teamsters did communicate to the City their position which they have a right to do. There is absolutely nothing in the record showing any effort by Golden State's competitors to have the City not renew the franchise other than the statement by the representative of the independent drivers at the City Council public hearing of March 28.

Because three Councilpersons may have made reference to the strike during the Council discussions does not allow for a characterization of the Council action

as part of a conspiracy as asserted by Golden State.

The California Supreme Court, in the case of County of Los Angeles v. Superior Court, 13 Cal.3d 721; 119 Cal.Rptr. 631 (1975), in considering the validity of a County ordinance which was allegedly adopted by the Board of Supervisors as a result of a threatened illegal strike by public employees, stated:

> "On one level, the doctrine which precludes judicial delving into the subjective mental processes of individual legislators is a corollary of the related legal principle which established that the validity of a legislative act does not depend on the subjective motivation of its draftsmen, but

rests instead on the objective effect of the legislative terms. Thus on many occasions this court has declared: ' . . . . (A) judiciary must judge by results, not by the varied factors which may have determined legislative votes.'" p. 727(3).

Golden State also asserts that because of the City's cease and desist order of April 28, 1983, Golden State "ultimately was driven into bankruptcy." Golden State's bankruptcy proceeding is pending in the Bankruptcy Court for the Central District of California, Case No. 81-01812-JD. The record in that case indicates it was commenced February 18, 1981, as an involuntary bankruptcy by an attorney who allegedly had money owing to him by Golden State and then on

August 11, 1981, the Bankruptcy Court, on the application of Golden State, converted the action into a Chapter 11 proceeding.

SUMMARY OF ARGUMENT

Petitioner makes specific reference to the case of Community Communications Co. v. City of Boulder, 455 U.S. 54 (1982) and Town of Hallie v. City of Eau Claire, 700 F.2d 376 (7th Cir. 1983).

The Court of Appeals decision rightly concluded that the State of California stance was not one of mere neutrality as to taxicab regulation. The Court concluded that the California Constitution and California statutes show an affirmatively expressed and clearly articulated state policy to displace competition with regulation in the taxicab industry. The State of

Colorado, in the City of Boulder case, had not addressed the question of cable television regulation. The case of Town of Hallie v. City of Eau Claire, wherein this court has granted certiorari, is distinguishable from the present case insofar as in Town of Hallie the City of Eau Claire was not a regulator but a competitor.

The City was not preempted by the National Labor Relations Act from denying Golden State's application for a renewal franchise. Golden State had requested the City to act.

ARGUMENT

I. THE NINTH CIRCUIT'S HOLDING IS CONSISTENT WITH PRIOR DECISIONS OF THIS COURT.

A. The California State legislative scheme relating to charter party carriers, which includes taxicabs, and the State's implied authorization

for the City to regulate taxicabs is sufficient to meet the "clearly articulated and affirmatively expressed" requirement for local immunity.

Petitioner argues that the California State legislature exhibited the same neutrality towards taxicab regulation by local entities as the State of Colorado did in reference to cable television regulation in the City of Boulder case. This, however, is not accurate.

The State of Colorado, in Boulder, had not addressed, in any way, the regulation of cable television by local entities. Rather the City of Boulder was relying upon a "home rule" provision of the Colorado State Constitution applicable to municipalities. This court, in City of Boulder, 455 U.S. 55, stated that in order for an action of a local entity to be described as

"comprehended within the powers granted . . . necessarily implies an affirmative addressing of the subject by the State."

The State of California, on the contrary, has affirmatively addressed the issue of taxicab regulation. Section 5360 of the California State Public Utilities Code, part of the State Passenger Charter-Party Carriers Act (A-21 of Petition) states;

> "Subject to the exclusions of Section 5353, 'Charter-party carrier of passengers' means 'every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carrier, over any public highway in this State".

By the language of this definition, a

taxicab would be a "Charter-party carrier". (Court of Appeals decision, Golden State Transit, p. 1433-1434, A-7, 8 of Petition.) The State of California has a detailed legislative scheme for the regulation of "charter-party carriers," by the State's Public Utilities Commission contained in the Charter Party Carrier Act. The Court of Appeals decision discusses its various provisions. The State Constitution also authorizes the State Public Utilities Commission to fix rates for such carriers. (Court of Appeals decision, Golden State Transit, p. 1433, A-6 of Petition).

The California State Charter-Party Carrier Act provides that the Act does not apply to taxicab transportation service licensed and regulated by a city

or county, by ordinance. California Public Utilities Code, Sec. 5353(g). (A-20, Petition) As stated the City of Los Angeles does license and regulate taxicabs. But, as the Court of Appeals stated (Golden State Transit, p. 1434, A-8 of Petition), "if a city does not license or regulate taxicabs, the state commission (Public Utilities) has the authority to do so".

The State legislative scheme is authorization for the City to regulate taxicabs in the State of California. The State of California has affirmatively addressed the regulation of taxicabs. In Boulder, this court stated there was "no interaction of state and local regulation" p. 55. Such interaction does exist in this case. The Court of Appeals rightly found that the State statutes

constituted "a clearly articulated and affirmatively expressed policy which allows municipalities to displace competition with regulation in the taxicab industry". (Golden State Transit, p. 1434, A-8 of Petition). Boulder did not require that the State direct a local entity to act for there to be local immunity. It is sufficient if there is State authorization. Boulder, p. 57. The Court of Appeals rightly concluded that the State had authorized the City to license and regulate taxicabs.

The specific City Council action involved here was the Council not approving the renewal franchise for Golden State. This action certainly comes within "regulation". Golden State has attempted to characterize the City's

action as refusing to renew the franchise in order to influence the labor negotiations. But that was not the City Council action. Such a motive cannot properly be ascribed to the City Council so as to make the City Council's action different than it was. Euster v. Eagle Downs Racing Association, 677 Fed.2d 992, 997 ftn. 7 (3d Cir. 1983); United States v. O'Brien, 391 U.S. 367, 383 (1968).

B. The City's regulation of taxicabs satisfies the active supervision test.

As the Court of Appeals, in their opinion, stated:

"The state legislature has determined that public transportation by taxicab should be regulated and that preferably the regulation should be handled by local

government. A requirement of active state supervision would erode local autonomy. It makes little sense to require a state to invest its limited resources in supervisory functions that are best left of municipalities. As Justice Rehnquist observed, "[i]t would seem rather odd to require municipal ordinances to be enforced by the State rather than the City itself. "Community Communications Co. v. City of Boulder, 455 U.S. at 71, n. 6, 102 S.Ct. at 851, n. 6 (Rehnquist, J. dissenting). p. 1434(4).

II. THE CASE OF TOWN OF HALLIE IS DISTINGUISHABLE FROM THE PRESENT ONE.

The California State legislation

enacted a legislative scheme allowing for the displacement of competition with regulation. The City of Los Angeles engages in the licensing and regulation of taxicabs. The City does not participate in the business of operating taxicabs. The City is licensing and regulating. In Town of Hallie v. City of Eau Claire, 700 F.2d 376 (7th Cir. 1983) the City of Eau Claire was not acting as a regulator. Rather it was looking to state legislation to justify its attempt, as alleged by the four towns affected, of;

> "(U)sing a monopoly over sewage treatment services in the relevant market to gain a monopoly in the markets for sewage collection and sewage treatment _____. P. 377-378.

Town of Hallie is clearly distinguishable on its facts from the present matter.

III. THE CITY'S CONDUCT WAS NOT PREEMPTED BY THE NATIONAL LABOR RELATIONS ACT

The contention that the City's conduct was preempted by the National Labor Relations Act and thus beyond the contemplation of the State and thus not immune was not raised by Golden State in the summary judgment proceeding in the District Court nor in the appeal from the granting of that partial summary judgment. This question, not being raised or preserved below, was waived.

The City's conduct was to vote against a motion to grant a renewal franchise for Golden State. The City Council did not condition the granting

strike. Golden State asserts that the City "plainly sided with the Teamsters in denying Golden State's franchise renewal." But as Councilman Ernani Bernardi stated during the Council hearing;

> "I don't know how having them (the drivers) stay out of work would be on their side, they are going to be out of a job. But I think this really is a position we've got to take and, would be to remain neutral." (CR 4, Exhibit 15, p. 30)

Mr. Bernardi went on to say that he was going to "vote to remain neutral" (p. 31) and voted against the motion to grant the renewal franchise.

In the present matter, unlike the cases cited by Golden State, Golden

State had asked the City to act. It requested the City to grant it a new franchise replacing the franchise due to expire. The City did not gratuitously interject itself in a labor dispute as the state and local entities did in the cases cited by Golden State. The logic of Golden State's argument would lead to the City having to surrender all discretion when acting on a matter where there was a labor dispute involved. If such was the case all an applicant for a license, permit or franchise from a governmental agency would need to do to assure its issuance is to be involved in a labor dispute at the time the governmental body acted on its application.

Golden State requested a new franchise. The City Council, in the

exercise of its discretion (Golden State Transit v. City, 686 F.2d at p. 760(4)) denied the request.

CONCLUSION

The Court of Appeals' decision is not in conflict with any opinion of this court. There is no serious question raised by the petition. The action involved herein was the City's refusal to grant an applicant a new franchise replacing an expiring one. For the foregoing reasons, a writ of certiorari should be denied.

Respectfully submitted,

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